

**REMARKS**

Claim 1 stands rejected under 35 U.S.C. §102(b) for asserted anticipation by European Union Plant Breeders' Rights Application No. 970950, published December 15, 1999 in the Official Gazette of the CPVO, in light of the Halpin reference and Applicant's previous and erroneous admission statement that 'Pendec' was sold as early as 1998 in Germany.

The Plant Breeders' Rights Application is a non-enabling publication in and of itself and does not indicate public use or sale of 'Pendec' in the United States more than one year before the filing date of the instant application. Further, the undersigned has now been advised that plant material was provided to a licensed propagator in Europe at the end of 2000 for the sole purpose of establishing mother plants from which commercial 'Pendec' plants were generated and sold only as early as the beginning of 2001, less than one year before the filing date of the present application. Further, the undersigned has now been advised that commercial sales of 'Pendec' did not occur in the United States until the beginning of 2001.

In view of the above new information, the scant information available in the publication of the 'Pendec' application would not have enabled one of ordinary skill in the art to reproduce the claimed plant more than one year before the filing date of the present application because the 'Pendec' plants were not accessible to the public until less than one year before the filing date of the present application. Thus, the rejection under 35 U.S.C. §102(b) is wholly inappropriate in this instance.

A substitute Declaration is not available for filing at this time. However, a suitable Declaration stating that the plant was found in a cultivated area has been forwarded to the Applicant for execution and will be provided to the Examiner in due course.

Application No. 09/664,247  
Response Dated April 28, 2006  
In Reply to USPTO Office Communication Dated April 31, 2006  
Attorney Docket No. 2384-001440

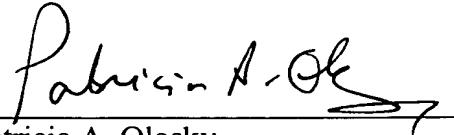
**CONCLUSION**

In light of the foregoing, allowance of the claim is respectfully requested.

Respectfully submitted,

THE WEBB LAW FIRM

By



Patricia A. Olosky  
Registration No. 53,411  
Attorney for Applicant  
436 Seventh Avenue  
700 Koppers Building  
Pittsburgh, PA 15219  
Telephone: (412) 471-8815  
Facsimile: (412) 471-4094  
E-mail: [webblaw@webblaw.com](mailto:webblaw@webblaw.com)